The opinion in support of the decision being entered today was <a href="not">not</a> written for publication and is <a href="not">not</a> binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE;

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

PAT & T.M. OFFICE ROARD OF PATENT APPEALS AND INTERFERENCES

Ex parte YOUICHI ISHIMURA and YOSHIFUMI TOMOMATSU

Appeal No. 2004-0501 Application No. 09/881,675

## ORDER REMANDING TO EXAMINER

Appellants filed a reply brief and request for oral hearing on January 7, 2004 (Paper Nos. 22 and 23) in response to the examiner's answer entered October 22, 2003 (Paper No. 18). However, there is no indication on the record whether or not the examiner has considered the reply brief. Section § 1208.03 of the Manual of Patent Examining Procedure (8<sup>th</sup> ed., Aug. 2001) states:

[A]ppellant may file a reply brief as a matter of right within 2 months from the mailing date of the examiner's answer. . . . The primary must then either: (A) acknowledge receipt and entry of the reply brief by

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using form paragraph 12.47 on form PTOL-90; or (B) reopen prosecution to respond to the reply brief. See MPEP \$ 1208.02.

Accordingly, it is

ORDERED that this application be remanded to the examiner for: 1) proper consideration and written response to the reply brief, and 2) for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of this appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS AND INTERFERENCES

Kimberly Fordan

Program and Resource Administrator

(703)308 - 9797

KJ:tdl

Appeal No. 2004-0501 Application No. 09/881,675

Oblon, Spivak, McClelland, Maier & Neustadt, PC 1940 Duke Street Alexandria, VA 22314